

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appln. No.	:	10/056,418	Confirmation No.:	8065
Appellant	:	CAMPBELL, Todd		
Filed	:	January 22, 2002		
TC/A.U.	:	3734		
Examiner	:	NGUYEN, Vi X.		
Docket No.	:	P895		
Customer No.	:	28390		
Title	:	STENT ASSEMBLY WITH THERAPEUTIC AGENT EXTERIOR BANDING		

REPLY BRIEF

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313

Dear Sir:

Please consider Appellant's reply brief in response to the Examiner's Answer  
mailed October 19, 2007, as follows:

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1. STATUS OF CLAIMS

Claims 34-36, 38, and 42 are pending. Claims 1-9, 37, and 39-41 were cancelled and claims 10-33 were withdrawn.

Claims 34-36, 38, and 42 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Publication No. 20010020181 to Layne (the *Layne* application) in view of U.S. Patent No. 6,096,070 to Ragheb, *et al.* (the *Ragheb* patent).

Claims 34-36, 38, and 42 are the claims on appeal.

2. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 34-36, 38, and 42 are unpatentable under 35 U.S.C. §103(a) over U.S. Patent Publication No. 20010020181 to Layne (the *Layne* application) in view of U.S. Patent No. 6,096,070 to Ragheb, *et al.* (the *Ragheb* patent).

### 3. ARGUMENTS

The Appellant respectfully submits that U.S. Patent Publication No. 20010020181 to Layne (the *Layne* application) in view of U.S. Patent No. 6,096,070 to Ragheb, *et al.* (the *Ragheb* patent) does not teach or suggest claims 34-36, 38, and 42, and that the rejection of claims 34-36, 38, and 42 under 35 USC §103(a) should be reversed. In addition to the arguments presented in the Appellant's Appeal Brief, which the Appellant maintains and reiterates, the Appellant addresses the Examiner's Answer mailed October 19, 2007, as provided below.

The claim language of independent claims 34, 35, 36, and 42 clearly distinguishes the invention of the Appellant's application from the disclosure of the *Layne* application and the *Ragheb* patent, which fail to disclose a stent assembly having a band circumferentially wrapped about a stent, the band comprising a polymer containing a therapeutic agent, and elastically gripping the stent, as recited in independent claims 34, 35, 36, and 42.

A. The *Layne* application fails to disclose an elastic band, and so fails to disclose a band elastically gripping the stent as claimed.

The Appellant respectfully submits that the Examiner is mistaken in asserting that the *Layne* application discloses a series of bands 52 capable of being easily stretched or elastically gripping the stent 30 as stated in the Response to Argument section of the Examiner's Answer mailed October 19, 2007. The Examiner is also mistaken in asserting that the bands 52 are capable of being stretched and resuming the original shape. At most, the *Layne* application discloses a series of spaced apart ePTFE circumferential bands that are fragile and inelastic. The *Layne* application itself points this out in explaining that PTFE is stretched to several hundred percent of its original length to form ePTFE and that radial expansion of a stent may stress and tear an ePTFE cover. See paragraphs [0006] and [0007]. If the ePTFE material were elastic, such stress and tearing would not occur.

The inelasticity of the ePTFE bands of the *Layne* application is further shown by the way in which the ePTFE bands are attached to the stent. The strips and/or bands are configured in the desired pattern onto each of the structures, the structures are exposed to heat and pressure, thereby causing the ePTFE regions of the bands to fuse or laminate to the tubular ePTFE graft. *See* paragraph [0021]. Therefore, the *Layne* application depends on fusing the ePTFE circumferential bands to the tubular ePTFE graft to retain the ePTFE circumferential bands on the stent, rather than the bands elastically gripping the stent. The ePTFE circumferential bands are fused to the tubular ePTFE graft and are only retained on the stent because the stent lies between the ePTFE circumferential bands and the tubular ePTFE graft. The ePTFE circumferential bands would not be retained on the stent without their connection to the tubular ePTFE graft within the stent, so the ePTFE circumferential bands fail to elastically grip the stent, as recited in the claim language of the independent claims.

B. The *Ragheb* patent fails to disclose a band comprising a polymer containing a therapeutic agent as claimed.

The Examiner asserts that the *Ragheb* patent teaches the stent has different therapeutic agents in the Grounds of Rejection section of the Examiner's Answer mailed October 19, 2007, but the Appellant respectfully submits that the *Ragheb* patent fails to disclose a band comprising a polymer containing a therapeutic agent as claimed. At most, the *Ragheb* patent discloses at least one layer 18 of a bioactive material posited on one surface of structure 12, and at least one porous layer 20 posited over the bioactive material layer 18. The porous layer 20 comprises a polymer applied preferably by vapor or plasma deposition and provides a controlled release of the bioactive material. *See* FIG. 1; Abstract. Any mixing of a bioactive material from the layers 18 into the porous layers 20, prior to introducing the device 10 into the vascular system of the patient, is unintentional and merely incidental. *See* FIG. 2; column 13, lines 57-61. The bioactive material is separate from the polymer, so the polymer fails to contain a therapeutic agent, as recited in the claim language of the independent claims.

8. SUMMARY

The Appellant respectfully submits that claims 34-36, 38, and 42 fully satisfy the requirements of 35 U.S.C. §§102, 103 and 112. In view of the foregoing, reversal of the rejection of claims 34-36, 38, and 42 under 35 U.S.C. §103(a) is respectfully requested.

Respectfully submitted,

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